



**Department of Commerce**  
Innovation is in our nature.

**STATE OF WASHINGTON**

**DEPARTMENT OF COMMERCE**

**REQUEST FOR PROPOSALS**

**10-RFP-197**

**PROJECT TITLE:**

**The Sustainable Communities Action Plan**

# STATE OF WASHINGTON

## Department of Commerce

### REQUEST FOR PROPOSALS

**NOTE:** *If you download this RFP from an agency website located at: [www.commerce.wa.gov](http://www.commerce.wa.gov), you are responsible for accessing any RFP amendments or bidder questions/agency answers from this website.*

**PROJECT TITLE:** The Sustainable Communities Action Plan

**PROPOSAL DUE DATE:** November 5, 2009 @ 5:00 p.m. – Time, *Pacific Standard Time or Pacific Daylight Time*, Olympia, Washington, USA.

**Only e-mailed bids will be accepted. Faxed bids and hard copies will not be accepted.**

**ESTIMATED TIME PERIOD FOR CONTRACT:** 11/20/09 thru 06/30/11

**APPLICANT ELIGIBILITY:** This procurement is open to community groups in Washington State that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

#### CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Applicants
3. Proposal Contents
4. Evaluation and Award
5. Exhibits
  - A. Certifications and Assurances
  - B. Personal Service Contract with General Terms and Conditions

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## **1. INTRODUCTION**

### **1.1 PURPOSE AND BACKGROUND**

The Washington State Department of Commerce, hereafter called "COMMERCE," is initiating this Request for Proposals (RFP) to solicit proposals from organizations known as community groups, hereinafter called "ORGANIZATION" interested in participating in a project to build local community capacity and economic development within this state by strengthening relationships between economically distressed communities, nonprofits, elected officials and governmental institutions.

### **1.2 OBJECTIVE**

The intent of COMMERCE in this RFP is to contract with a community group to assist communities of color to build local capacity and expand their economic development knowledge base. The organization will identify opportunities for collaboration and initiate activities and events that bring community organizations, local governments, state agencies and elected officials together to address the impacts of poverty, political disenfranchisement, and economic inequality on communities of color. COMMERCE and the ORGANIZATION will agree on final deliverables and anticipated outcomes for this project.

### **1.3 MINIMUM QUALIFICATIONS**

- The Organization must be licensed to perform work in Washington State.
- The Organization must provide a current Washington State UBI number.
- The Organization must provide the most current completed copy of IRS Form 990.
- The Organization must have a minimum of two years of experience working with community based organizations. It is important that the Organization understand the importance of broad-based community involvement and the impacts of being politically astute organizationally.
- The Organization must have a legally constituted Board of Directors.
- The Organization must provide at least three references from customers to whom the Organization has provided similar services during the past 24 months preceding the bid due date. References from affiliated organizations will not be accepted.
- The Organization's mission must include building local capacity and economic development in economically distressed communities.

### **1.4 FUNDING**

COMMERCE has budgeted an amount not to exceed \$292,500 for this project. Proposals in excess of \$292,500 will be rejected as non-responsive and will not be evaluated. The state funding and the contract award are contingent upon verification of receipt, by the Organization for the entire amount of the match of non-state funding. Funds will be allocated as follows:

- For Fiscal Year 2010 (November 20, 2009 (estimated contract start date) through June 30, 2010:
  - Up to \$146,250 state grant funds to be matched by an equal amount from non-state sources provided by the Organization, including in-kind contributions.
- For Fiscal Year 2011 (July 1, 2010 through June 30, 2011):
  - Up to \$146,250 state funds to be matched by an equal amount from non-state sources provided by the Organization, including in-kind contributions.

Applicant must furnish documentation of the availability of non-state matching funds.

Any contract awarded as a result of this procurement is contingent upon the availability of funding. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

## **1.5 PERIOD OF PERFORMANCE**

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about November 20, 2009 and to end on June 30, 2011.

## **1.6 DEFINITIONS**

Definitions for the purposes of this RFP include:

**Community Group:** An organization whose prime mission is building local capacity and economic development in economically distressed communities.

**COMMERCE** – The Department of Commerce is the agency of the state of Washington that is issuing this RFP.

**Organization** – The Community Group submitting a proposal in order to attain a contract with COMMERCE.

**Contractor** – Individual or company whose proposal has been accepted by COMMERCE and is awarded a fully executed, written contract.

**Proposal** – A formal offer submitted in response to this solicitation.

**Request for Proposals (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the Organization to suggest various approaches to meet the need at a given price.

## **1.7 ADA**

COMMERCE complies with the Americans with Disabilities Act (ADA). Organizations may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

## **2. GENERAL INFORMATION FOR ORGANIZATIONS**

### **2.1 RFP COORDINATOR**

The RFP Coordinator is the sole point of contact in COMMERCE for this procurement. All communication between the Organization and COMMERCE upon receipt of this RFP shall be with the RFP Coordinator.

Kathy Chance, RFP Coordinator  
P. O. Box 42525  
906 Columbia Street, SW  
Olympia, WA 98504-2525  
Telephone Number: (360) 725-3076  
Fax Number: (360) 664-3123  
Email Address: [Kathy.chance@commerce.wa.gov](mailto:Kathy.chance@commerce.wa.gov)

Any other communication will be considered unofficial and non-binding on COMMERCE. Organizations are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Organization.

## 2.2 ESTIMATED SCHEDULE OF ACTIVITIES

Issue Request for Proposals .....	10/06/09
Proposals due date.....	11/05/09
Review RFP's .....	11/9-11/13/09
Announce Organization and send notification via fax or Email to unsuccessful proposers.....	11/16/09
Draft and negotiate contract .....	11/16-11/19/09
Begin contract work .....	11/20/09

COMMERCE reserves the right to revise the above schedule.

## 2.3 PROPOSED TASKS

The Organization will develop and implement a plan by which communities of color can strengthen their ties with their elected officials, state agencies, local governments, and nonprofit organizations that serve them, thereby increasing their ability to identify and secure funding for a variety of ongoing community and economic development initiatives.

The Organization will list strategies to identify, approach, and work with:

- State agencies;
- Units of local government; and
- Philanthropic nonprofits

The Organization will identify communities of color throughout the state in which it will plan its scope of work. Proposals that will work across the state will be considered more favorably and will be scored higher.

The Organization will facilitate collaboration/cooperation between agencies, cities, community groups and neighborhoods to explore models and strategies that bring about meaningful change and enhanced leadership in communities of color.

The Organization will identify and document key strategies and resources to demonstrate how to track public policy issues, monitor legislative activities, develop governmental relations, and explore philanthropic opportunities. The strategies should be practical and easy to implement. These strategies should enhance organizational leadership and management skills that accomplish the objectives of this RFP. A key component of a successful proposal must include a methodology which can easily be replicated in other communities of color throughout the state.

The Organization will develop assessment tools to identify priority technical assistance needs. These tools must be replicable.

The Organization will identify obstacles to implementation of strategies and develop solutions to mitigate those obstacles.

### **Progress Report:**

The Organization will provide a progress report to COMMERCE on June 30, 2010. This may include a meeting with agency staff

## **Final Report:**

The Organization will provide a written Final Report regarding tools and methodologies proposed. The report will include the deliverables as listed in Proposed Tasks, Section 2.3, plus strategies for continuing the work to date - including a template for replicating the program in other communities. The department must also receive the Final Report in PDF or Word version.

The Organization's work will inform COMMERCE and appropriate Legislative Committees in identifying programs and activities which strengthen relationships between economically distressed communities, elected officials, nonprofit organizations and governmental institutions. The Organization's work may also assist COMMERCE and Committees in making legislative recommendations to the Legislature and Governor to implement planning strategies.

The Organization may be required to attend meetings of the appropriate legislative committees between January 2010 and May 2011 to provide and receive input on preliminary findings and analysis results.

## **2.4 SUBMISSION OF PROPOSALS**

Proposals must be submitted electronically. Proposals may not be transmitted via facsimile. For electronic submission, the following information is applicable. Proposals being submitted electronically must be submitted as an attachment to an e-mail to the RFP Coordinator listed on Page 4. Proposals must arrive by 5:00 p.m. local time in Olympia, Washington, on November 5, 2009. Attachments to e-mail shall be on Microsoft Word software. Zipped files cannot be received by COMMERCE and cannot be used for submission of proposals. COMMERCE does not assume responsibility for any electronic malfunctions.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits.

Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

## **2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

Proposals submitted in response to this competitive procurement shall become the property of COMMERCE. All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Director of COMMERCE, or the Director's Designee, and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Organization desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Organization is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure will not be honored.

If a public records request is made for the information that the Organization has marked as "Proprietary Information" COMMERCE will notify the Organization of the request and of the date that the records will be released to the requester unless the Organization obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, COMMERCE shall maintain the confidentiality of the Organization's information per the court order.

A charge will be made for copying and shipping, as outlined in Chapter 42.56 RCW. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **2.6 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail or in hardcopy to all who were sent the RFP.

If you download this RFP from the Department of Commerce website located at [www.commerce.wa.gov](http://www.commerce.wa.gov), you are responsible for sending your name, address, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/COMMERCE answers.

COMMERCE also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

## **2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

## **2.8 ACCEPTANCE PERIOD**

Proposals must provide 60 days for acceptance by COMMERCE from the due date for receipt of proposals.

## **2.9 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Organization is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

COMMERCE also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

## **2.10 MOST FAVORABLE TERMS**

COMMERCE reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Organization can propose. There will be no best and final offer procedure. COMMERCE does reserve the right to contact an Organization for clarification of its proposal during the evaluation process. In addition, if the Organization is selected as the apparent successful contractor, COMMERCE reserves the right to enter into contract negotiations with the apparent successful contractor, which may include discussion regarding the terms of the proposal. Contract negotiations may result in incorporation of some or the Organization's entire proposal. The Organization should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. It is also understood that the proposal will become part of the official procurement file.



## **2.11 CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful contractor will be expected to enter into a contract that is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is an Organization to submit its own standard contract terms and conditions in response to this solicitation. The Organization may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

## **2.12 COSTS TO PROPOSE**

COMMERCE will not be liable for any costs incurred by the Organization in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

## **2.13 NO OBLIGATION TO CONTRACT**

This RFP does not obligate the state of Washington or COMMERCE to contract for services specified herein.

## **2.14 REJECTION OF PROPOSALS**

COMMERCE reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

## **2.15 COMMITMENT OF FUNDS**

The Director of COMMERCE or his delegate is the only individuals who may legally commit COMMERCE to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

## **2.16 ELECTRONIC PAYMENT**

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

## **2.17 INSURANCE COVERAGE**

The Contractor is to furnish COMMERCE with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE within fifteen (15) days of the contract effective date.

### **Liability Insurance**

- 1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) **Business Auto Policy:** As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto."

#### **Employers Liability ("Stop Gap") Insurance**

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

#### **Additional Provisions**

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Cancellation.** State of Washington, Department of Commerce, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): COMMERCE shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, COMMERCE shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference COMMERCE's contract number and agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the COMMERCE Program Manager or the Risk Manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
5. **Excess Coverage.** By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to COMMERCE in this contract.

#### **Worker's Compensation Coverage**

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

### **3. PROPOSAL CONTENTS**

Proposals must be submitted electronically only. Electronic submittals shall be formatted to print on an (8 1/2 x 11) inch paper. The four major sections of the proposal are to be submitted in the order noted below:

1. Signed or Certified Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP).
2. Technical Proposal.
3. Management Proposal.
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Organization in preparing a thorough response.

Items in this section marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

#### **3.1 LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Organization to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Organization and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Organization (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Location of the facility from which the Organization would operate.
6. Identify any State employees or former State employees employed or on the firm’s governing board as of the date of the proposal. Include their position and responsibilities within the organization. If following a review of this information, it is determined by COMMERCE that a conflict of interest exists, the Organization may be disqualified from further consideration for the award of a contract.

### 3.2 TECHNICAL PROPOSAL (SCORED)

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology (SCORED)** – Include a complete description of the Organization's proposed approach and methodology for the project. This section should convey the Organization's understanding of the proposed project.
- B. Work Plan (SCORED)** – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Organization's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of COMMERCE staff. The Organization may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. Project Schedule (SCORED)** – Include a project schedule indicating when the elements of the work will be completed and when deliverables will be provided.
- D. Deliverables (SCORED)** – Fully describe deliverables to be submitted under the proposed contract.
- E. Outcomes and Performance Measurement** – Describe the impacts/outcomes the Organization proposes to achieve as a result of the delivery of these services including how these outcomes will be monitored, measured and reported to COMMERCE.
- F. Risks** -Address potential risks associated with this contract.

Examples include:

#### **Overall Risk**

Define risks you identify as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to COMMERCE's contract manager.

#### **Specific Risks**

- Outline a proposal for minimizing staff turnover and its impact on COMMERCE's contract management staff.
- Provide a business continuation plan that illustrates how you will monitor and manage through times of labor disruption, loss of facility and/or key staff/personnel.

### 3.3 MANAGEMENT PROPOSAL

#### **A. Project Management (SCORED)**

1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide résumés for the named staff, which include information on the individual's particular skills

related to this project, education, experience, significant accomplishments and any other pertinent information. The Organization must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of COMMERCE.

**B. Experience of the Organization (SCORED)**

1. Indicate the experience the Organization and any subcontractors have in the following areas:  
  
Development and execution of strategies directly related to research and innovations to improve services and deliver meaningful results for communities of color.
2. Indicate other relevant experience that indicates the qualifications of the Organization, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Organization has had during the last two years that relate to the Organization's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

**C. References (SCORED)**

List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business references for which work has been accomplished and briefly describe the type of service provided. The Organization and staff proposed to provide the services must grant permission to COMMERCE to contact references, and others for whom services have been provided. Do not include current COMMERCE staff as references. References will be contacted and scored for the top-ranking proposal(s) only.

**D. Related Information (MANDATORY)**

1. If the Organization or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Organization's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Organization has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Organization's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Organization's position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Organization in the past five years, so indicate.

**E. OMWBE Certification (Optional and Not Scored)**

Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

### **3.4 COST PROPOSAL**

The maximum fee for this contract must be \$292,500.00 or less to be considered responsive to this RFP. Non-responsive proposals will not be evaluated.

The evaluation process is designed to award this procurement not necessarily to the Organization of least cost, but rather to the Organization whose proposal best meets the requirements of this RFP. However, Organizations are encouraged to submit proposals that are consistent with State government efforts to conserve state resources.

#### **A. Identification of Costs**

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Organization is to submit a fully detailed budget including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Organizations are required to collect and pay Washington State sales tax, if applicable.

Costs for subcontractors are to be broken out separately.

#### **B. Computation (SCORED)**

Will be based both upon the total cost of the project and upon the reasonable allocation of costs for the project.

## **4. EVALUATION AND CONTRACT AWARD**

*ALL MANDATORY REQUIREMENTS MUST BE MET IN ORDER TO BE EVALUATED.*

### **4.1 EVALUATION PROCEDURE**

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by COMMERCE, which will determine the ranking of the proposals.

COMMERCE, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

### **4.2 CLARIFICATION OF PROPOSAL**

The RFP Coordinator may contact the Organization for clarification of any portion of the Organization's proposal.

#### 4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal – 40% .....	80 points
Project Approach/Methodology	25 points (maximum)
Quality of Work Plan	35 points (maximum)
Project Schedule	10 points (maximum)
Project Deliverables	10 points (maximum)
Management Proposal – 30% .....	60 points
Project Team Structure/Internal Controls	15 points (maximum)
Staff Qualifications/Experience	15 points (maximum)
Experience of the Organization	30 points (maximum)
Cost Proposal – 30% .....	<u>60 points</u>
Sub-Total .....	200 points
References [top-scoring proposer(s) only]	<u>10 points</u>
<b>GRAND TOTAL FOR WRITTEN PROPOSAL.....</b>	<b>210 points</b>

References will be contacted for the top-scoring proposer(s) only and will then be scored and added to the total score.

#### 4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning proposal. COMMERCE, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should COMMERCE elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time and location. Commitments made by the Organization at the oral interview, if any, will be considered binding. The high scorer in the oral interviews will be determined to be apparently successful bidder regardless of scores for Technical, Management and Cost sections.

#### 4.5 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified via FAX or by e-mail.

#### 4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conversation may be scheduled with an unsuccessful Proposer. The request should be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Organization letter is faxed/e-mailed to the Organization.

Discussion will be limited to a critique of the requesting Organization's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### 4.7 PROTEST PROCEDURE

This procedure is available to community groups who submitted a response to this solicitation document and who have participated in a debriefing conversation. Upon completing the debriefing

conversation, the Community Group is allowed three (3) business days to file a protest with the RFP Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Community Groups protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Community Groups under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFP Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of the evaluator.
- Errors in computing the score.
- Non-compliance with procedures described in the procurement document or COMMERCE policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) COMMERCE's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by COMMERCE. The COMMERCE Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Community Group that submitted a proposal, such Community Group will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE's action; or
- Find only technical or harmless errors in COMMERCE's acquisition process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest at which point COMMERCE's options may include:
  - Correct the errors and re-evaluate all proposals, and/or
  - Reissue the solicitation document and begin a new process, or
  - Make other findings and determining other courses of action as appropriate.

If COMMERCE determines that the protest is without merit, COMMERCE will enter into a contract with the apparently successful Community Group. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **5. RFP EXHIBITS**

- Exhibit A    Certifications and Assurances
- Exhibit B    Contract including General Terms and Conditions



**INSTRUCTIONS**  
**GENERAL GRANT**  
**STATE FUNDS**

**EXHIBIT A to RFP**

**CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by COMMERCE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

*Note: If submitted electronically, include the following:*

*On behalf of the firm submitting this proposal, my name below attests to the accuracy of the above statements.*

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**INSTRUCTIONS**  
**GENERAL GRANT**  
**STATE FUNDS**

**EXHIBIT B to RFP**

**How to Use this Template**-This is the template for COMMERCE General Grants-State Funded. It is used when COMMERCE has the specific authority to issue a grant. The principle purpose of a grant is to transfer funds to a grantee to accomplish a stated public purpose. In contrast, a contract is designed to provide COMMERCE with well-defined goods or services.

Each grant has the following parts:

- Cover Page-The first page of each grant will have a cover page that includes the Department of Commerce logo, name of project, name of program and start date. The logo is currently under development and will be inserted before July 26, 2009, which is the date when the Department of Community, Trade and Economic Development legally becomes the Department of Commerce.
- Table of Contents-Lists all sections of the grant and page numbers.
- Stated Name of Entity Issuing Agreement-This Template may be used by COMMERCE as well as its various Boards and Commissions. The language now identifies COMMERCE as the granting party. But if a Board or Commission issues the grant it may insert its name. For example, in the General Terms of Conditions of this Template, page 1, Section 1, entitled "Definitions", the granting party is COMMERCE and identified as follows: "COMMERCE' shall mean the Department of Commerce." If a Board such as the Public Works Board issued the grant, this language would instead say: "PWB' shall mean the Public Works Board created in RCW 43.155.030." And in such case the PWB would do a "find and replace" in Word to replace COMMERCE with PWB through-out the Face Sheet, Special Terms and Conditions and General Terms and Conditions.
- Face Sheet-This one page has much of the data about the Grantee and Grant, e.g., Grant number, Grantee name and address, start and end dates, TIN, SWV Number, etc. It provides for the signatures of both COMMERCE and the Grantee.
- Special Terms and Conditions-The attached Special Terms and Conditions are very specific to each Grant. Thus, the content may not be standard among all COMMERCE grants. The program may re-word these or add more terms to fit their individual needs. If they do not apply, the program should conduct a risk assessment/analysis involved in deleting it. Documentation of such will be kept in both the FSD Contracts and Program files for this Grant. Then this provision may be deleted from the body of Grant and Grant table of contents.

There are two parts of Special Terms and Conditions. The first is the "Grantee Special Terms and Conditions" and the second is the "Program Special Terms and Conditions".

- Grantee Special Terms and Conditions include details of the actual work to be performed and compensation.
- Program Special Terms and Conditions are included in each Grant of this specific type. For example, a Grant may have special reporting provisions.

**INSTRUCTIONS**  
**GENERAL GRANT**  
**STATE FUNDS**

When there is a conflict between various parts of the Grant, the "Order of Precedence" paragraph describes how it is resolved. First are the applicable laws and regulations. Then the Special Terms and Conditions followed by the General Terms and Conditions.

- General Terms and Conditions-These are of a more general nature and should be the same for each COMMERCE type. For example, all Grants should have a provision for the Americans with Disabilities Act and both the content and title ought to be the same.

Not all the provisions may be utilized. But they should still remain as a General Term and Condition. For example, the termination provisions may never be used in grants that are successfully completed and terminate on the stated end date. But the provision should remain in each Grant should circumstances require an early termination.



# Department of Commerce

Innovation is in our nature.

**Grant to**

<Grantee or local gov organization name here>

through

<Name of COMMERCE **program** issuing/administering grant here

**For**

<List the project title, if applicable, and describe the primary purpose for the funding or the intended outcome in approx. 25 words or less>

**Start date:**      <Month> <Day>, <Year>

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Attachment A, Scope of Work

Attachment B, Budget

# FACE SHEET

Grant Number: <Insert number>

Washington State Department of Commerce

<Select Division, Board, or Commission>

<Insert Unit or Office>  
<Insert Program(s) and/or Project(s)>

<b>1. Grantee</b> <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		<b>2. Grantee Doing Business As (optional)</b> <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
<b>3. Grantee Representative</b> <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		<b>4. COMMERCE Representative</b> <Insert name>                      <Insert mailing address> <Insert title>                      <Insert physical address> <Insert phone>                      <Insert location> <Insert FAX> <Insert e-mail>	
<b>5. Grant Amount</b> <Insert \$ amount>	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> <Insert date>	<b>8. End Date</b> <Insert date>
<b>9. Federal Funds (as applicable)</b> <Insert \$ amount>		<b>Federal Agency</b> <u><b>CFDA Number</b></u> <Insert agency name>                      <Insert number>	
<b>10. Tax ID #</b> <Insert number>	<b>11. SWV #</b> <Insert number>	<b>12. UBI #</b> <Insert number>	<b>13. DUNS #</b> <Insert number>
<b>14. Grant Purpose</b> <Briefly describe grant purpose>			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment "A" - <insert title>, Attachment "B" - <insert title>, Attachment "C" - <insert title>, <etc.>			
<b>FOR GRANTEE</b>  _____ <insert name>, <insert title>  _____ Date		<b>FOR COMMERCE</b>  _____ <insert name>, <insert tile>  _____ Date  <p style="text-align: center;"><b>APPROVED AS TO FORM ONLY</b></p> _____ <insert name>, <insert title>  _____ Date	

**1. GRANT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

**2. COMPENSATION**

COMMERCE shall pay an amount not to exceed (\$) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

**NOTES:**

1. *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. or reference documents that specify Grantee's compensation and payment, e.g., Grantee's compensation for services rendered shall be based on the schedule set forth in Exhibit , Fees and Expenses.*
2. *Identify federal and state dollar amounts when relevant reporting requirements apply.*

**EXPENSES**

**NOTE:** *Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the Grant.*

Grantee shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Grantee for authorized expenses shall not exceed \$ , which amount is included in the Grant total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Grantee shall receive compensation for travel expenses at current state of Washington travel reimbursement rates

**3. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE *[not more often than monthly.]*

**NOTE:** *Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Grant, payment at conclusion of the Grant, etc.*

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number . If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The Grantee shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Grantee, if the Grantee is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Grantee is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

**NOTE:** *Optional Provision - COMMERCE shall withhold 10 percent from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).*

**4. INSURANCE**

The Grantee shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subgrantee, or agents of either, while performing under the terms of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of the Grant start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Grant, the Grantee shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, as follows:

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Grant activity but no less than \$1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantees provide adequate insurance coverage for the activities arising out of subgrants.

**Automobile Liability.** In the event that performance pursuant to this Grant involves the use of vehicles, owned or operated by the Grantee or its Subgrantee, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the



Grantee and licensed staff employed or under Grant to the Grantee. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$100,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Grantor as beneficiary.
- B. Subgrantees that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees pursuant to this paragraph shall name the Grantee as beneficiary.
- C. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

## **5. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- [add any other attachments incorporated by reference on the Face Sheet]

## **1. DEFINITIONS**

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee" shall mean one not an employee of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee" and "subgrantees" means subgrantee(s) in any tier.

**2. ADVANCE PAYMENTS PROHIBITED**

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

**3. ALL WRITINGS CONTAINED HEREIN**

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

**4. AMENDMENTS**

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

**6. APPROVAL**

This Grant shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The Grant may be altered, amended, or waived only by a written amendment executed by both parties.

**7. ASSIGNMENT**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

**8. ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorneys fees and costs.

**9. AUDIT**

**A. General Requirements**

Grantee's are to procure audit services based on the following guidelines.

The Grantee shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subgrantees also maintain auditable records.

The Grantee is responsible for any audit exceptions incurred by its own organization or that of its Subgrantees.

COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

As applicable, Grantee's required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Grantee must respond to COMMERCE

requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. State Funds Requirements**

Grantee's expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

Grantor agency name  
State program name  
BARS account number  
Grantor  
COMMERCE Grant number  
Grant award amount including amendments (total grant award)  
Beginning balance  
Current year revenues  
Current year expenditures  
Ending balance  
Program total

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee.

The Grantee shall include the above audit requirements in any subgrants.

In any case, the Grantee's financial records must be available for review by COMMERCE.

**C. Documentation Requirements**

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee's fiscal year(s) to:

Department of Community Trade and Economic Development  
ATTN: Audit Review and Resolution Office  
906 Columbia Street SW, Fifth Floor  
PO Box 48300  
Olympia WA 98504-8300

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

**10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

**A. "Confidential Information" as used in this section includes:**

1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by the COMMERCE;
2. All material produced by the Grantee that is designated as "confidential" by COMMERCE and
3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of

government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever the Grantor reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

#### **11. CONFORMANCE**

If any provision of this Grant violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### **12. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Grantor. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered

under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

### **13. DISPUTES**

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with COMMERCE's Director, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

### **14. DUPLICATE PAYMENT**

The Grantee certifies that work to be performed under this Grant does not duplicate any work to be charged against any other Grant, subgrant, or other source.

### **15. ETHICS/CONFLICTS OF INTEREST**

In performing under this Grant, the Grantee shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

### **16. GOVERNING LAW AND VENUE**

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

### **17. INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Grantee's performance or failure to perform the Grant. The Grantee's obligation to indemnify, defend, and hold harmless includes any

claim by the Grantee's agents, employees, representatives, or any Subgrantee or its agents, employees, or representatives.

The Grantee's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subgrants shall include a comprehensive indemnification clause holding harmless the Grantee, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

#### **18. INDEPENDENT CAPACITY OF THE GRANTEE**

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

#### **19. INDUSTRIAL INSURANCE COVERAGE**

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

#### **20. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

##### **Washington State Laws and Regulations**

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

**21. LICENSING, ACCREDITATION AND REGISTRATION**

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

**22. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant.

**23. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with the state. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**24. POLITICAL ACTIVITIES**

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used under this Grant for working for or against ballot measures or for or against the candidacy of any person for public office.

**25. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**26. PUBLICITY**

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

**27. RECAPTURE**

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

**28. RECORDS MAINTENANCE**

The Grantee shall maintain all books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to

accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant. Grantee shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

**29. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

**30. RIGHT OF INSPECTION**

At no additional cost all records relating to the Grantee's performance under this Grant shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Grant. The Grantee shall provide access to its facilities for this purpose.

**31. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

**32. SEVERABILITY**

If any provision of this Grant or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Grant that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Grant and to this end the provisions of this Grant are declared to be severable.

**33. SUBGRANTING**

The Grantee may only subgrant work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subgranting, the Grantee shall maintain written procedures related to subgranting, as well as copies of all subgrants and records related to subgrants. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subgranting procedures as they relate to this Grant; (b) prohibit the Grantee from subgranting with a particular person or entity; or (c) require the Grantee to rescind or amend a subgrant.

Every subgrant shall bind the Subgrantee to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subgrantee fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this Grant. In no event shall the existence of a subgrant operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subgrant shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee's performance of the subgrant.

**34. SURVIVAL**



The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

**35. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

**36. TERMINATION FOR CAUSE / SUSPENSION**

In event COMMERCE determines that the Grantee failed to comply with any term or condition of this Grant, COMMERCE may terminate the Grant in whole or in part upon written notice to the Grantee. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE upon written notice may allow the Grantee a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Grantee in whole or in part, or may restrict the Grantee's right to perform duties under this Grant. Failure by the Grantee to take timely corrective action shall allow COMMERCE to terminate the Grant upon written notice to the Grantee.

"Termination for Cause" shall be deemed a "Termination for Convenience" when COMMERCE determines that the Grantee did not fail to comply with the terms of the Grant or when COMMERCE determines the failure was not caused by the Grantee's actions or negligence.

If the Grant is terminated for cause, the Grantee shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Grant and the replacement Grant, as well as all costs associated with entering into the replacement Grant (i.e., competitive bidding, mailing, advertising, and staff time).

**37. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Grant COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

**38. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Grantee shall:

- A. Stop work under the Grant on the date, and to the extent specified, in the notice;
- B. Place no further orders or subgrants for materials, services, or facilities related to the Grant;
- C. Assign to COMMERCE all of the rights, title, and interest of the Grantee under the orders and subgrants so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants. Any attempt by the Grantee to settle such claims must have the prior written approval of COMMERCE; and
- D. Preserve and transfer any materials, Grant deliverables and/or COMMERCE property in the Grantee's possession as directed by COMMERCE.

Upon termination of the Grant, COMMERCE shall pay the Grantee for any service provided by the Grantee under the Grant prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Grantee if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Grant or otherwise provided under law.

**39. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

**Scope of Work**

**Budget**